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Approved For Release 2002/08/15 : CIA-RDP86-00101R000100060001-7

DDA 78-1340/1

31 March 1978

MEMORANDUM FOR: Legislative Counsel

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ATTENTION : [REDACTED]
Assistant Legislative Counsel

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FROM : [REDACTED]
Assistant for Information, DDA

SUBJECT : Charter Legislation - Title V and Title VI

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REFERENCE : Multiple addressee memorandum from [REDACTED]
[REDACTED], dtd 20 March 1978, Subj:
S. 2525 - Proposed Intelligence Charter
Legislation - Title V and Title VI Issues
Paper (OLC 78-0399/34)

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The DDA concurs in the statements of issues submitted with reference. We have only one observation to make. While we do not disagree with your comment on Section 621(a), we think that it may not be totally appropriate for this Agency to comment on the investigative procedures or authorities of NSA. In any event, we understand that NSA relies upon the Defense Investigative Service for most, if not all, of its applicant investigations.

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AI/DDA: [REDACTED] (30 Mar 78)

Distribution:

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Original - Addressee
1 - OS [REDACTED]
✓ 1 - DDA Subject (Title VI)
1 - DDA Chrono
1 - AI Chrono

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Title I VI

FROM:

Legislative Counsel
6D15 HQ

EXTENSION

NO.

DATE

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TO: (Officer designation, room number, and building)

DATE

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDA

Attn:

7D18 HQ

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Copies to DC + OS 3/21

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OLC 78-0399/34

20 March 1978

MEMORANDUM FOR: ✓ Deputy Director for Administration
Deputy Director for Operations
Deputy Director for Science and Technology
Director, National Foreign Assessment Center
General Counsel
Comptroller
Inspector General

STAT FROM:
Assistant Legislative Counsel

SUBJECT: S. 2525 - Proposed Intelligence Charter Legislation
Title V and Title VI Issues Papers

REFERENCE: OLC 78-0399/33, dated 17 March 1978, on
S. 2525, Title I Issues Paper

Attached for your review and coordination are short issues papers on Titles V (FBI) and VI (NSA) of the intelligence charter legislation. As with the paper distributed by reference memorandum, please provide comments only in those instances in which there are significant issues which you think should be raised in the context of either of these titles not raised in these papers or if you have a strong objection to treatment of one of the issues. In order to meet the deadline in the reference memorandum, please provide your coordination on the attached paper by COB 24 March 1978. Thank you.

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Assistant Legislative Counsel

Attachment

cc:
DDCI

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S. 2525 - Title V (FBI) Issues

1. Section 508(a) -- In order to ensure that the Director of National Intelligence is kept appropriately aware of counterintelligence and counterterrorism intelligence activities in the U.S., particularly those--as covered by this subsection--involving services of foreign governments, it is recommended that the following new paragraph (3) be added to the end of this subsection: ", and (3) such written request is made available to the Director of National Intelligence and any collection under this subsection is carried out in consultation with the Director of National Intelligence." The term "and" immediately preceding "(2)" in this subsection should be deleted.

2. Section 508(b) and (c) -- This subsection concerns assistance by the FBI to services or officers of foreign governments. The Director of National Intelligence and the CIA would have important equities in such activities involving intelligence, and this subsection should reflect that fact (the Secretary of State is so specifically mentioned in paragraph (b)(1)). It is therefore recommended that the language "in consultation with the Director of National Intelligence" be inserted in paragraph (b) (3) immediately before "a written finding..." Similarly, since the Director of National Intelligence does have a legitimate interest in being kept informed as to activities by officers and agencies of foreign governments in the U.S., it is recommended that the language "and, as appropriate, the Director of National Intelligence" be inserted immediately after "Attorney General's designee..."

S. 2525 ISSUES - TITLE VI
National Security Agency

1. Section 613(a)--Paragraph (12), which concerns the duty of the Director of NSA to determine the resources and support needs of the NSA and to enter into agreements with other departments and agencies to provide resources and support, recognizes the role of the Secretary of Defense but is silent as to the equities of the DNI. This duty should reflect the appropriate role of the DNI and the CIA in conducting clandestine signals intelligence activities and in supporting NSA activities (see, e.g., sections 413(b)(2), 421(a)(7) and 662(d)). It is therefore recommended that the language "and in coordination with the Director of National Intelligence," be inserted immediately after "based upon guidance from the Secretary of Defense, ..."

Other duties enumerated in this subsection likewise fail to provide for consultation with the DNI as to duties of the Director of NSA that relate directly to duties and authorities of the DNI or the CIA. It is therefore recommended that the language ", in coordination with the Director of National Intelligence,..." be inserted in each of the following paragraphs, immediately following the verb at the start of the paragraph text: paragraph (9) [consolidate functions to achieve efficiency], paragraph (18) [communications support and facilities], paragraph (19) [prescription of cryptographic systems and techniques], and (21) [receipt of signals intelligence].

2. Section 614(a)(17)--This paragraph provides the authority for the National Security Agency to conduct "cryptologic liaison with foreign governments" in coordination with the Director of National Intelligence. This Agency has recommended that paragraph 413(g)(3) of Title IV, concerning CIA conduct of liaison with foreign governmental agencies, be amended to include the responsibility to coordinate the liaison relationships between other entities of the Intelligence Community and foreign intelligence and liaison services. (The Director of National Intelligence, pursuant to subsection 114(j) of Title I, is responsible for coordinating intelligence relationships between entities of the Intelligence Community and foreign services.) In accordance with this recommended coordinating responsibility for the Central Intelligence Agency, it is recommended that paragraph (17) of subsection 613(a) be amended to read as follows: "(17) conduct, in coordination with the Central Intelligence Agency, cryptologic liaison with foreign governments;"

3. Section 621(a)--It would seem appropriate to authorize NSA to investigate applicants, employees, contractors, etc., in this subsection. The CIA has an equity in providing clear statutory authority for the NSA as to security investigations in order to facilitate provision of intelligence information to the NSA as may be required under this title.

Consistent with the recommended amendment to paragraph 421(a)(3) regarding the CIA, it is recommended that the language ", detailed" be inserted to paragraph (3) of this subsection immediately following "personnel assigned..."

4. Section 631(a)--Concerning the designation by the President of entities of the Government authorized to request and receive signals intelligence information obtained or produced by the National Security Agency, it would seem appropriate that the Director of National Intelligence, the Director of the National Security Agency and the Secretary of Defense should be charged with having an input into this process. It is therefore recommended that the first sentence of subsection (a) be amended to read as follows: "(a) the President shall, within 30 days after the effective date of this Act, and at such times thereafter as necessary, and based upon recommendation received from the Director [of the National Security Agency], the Director of National Intelligence, and the Secretary of Defense, designate in writing those authorized to request and receive signals intelligence information..."

5. Section 662--This section concerns the extent of the authority of the Director of the National Security Agency vis-a-vis the responsibilities and authorities of other departments and agencies. Subsection (d) concerns the authority of the Central Intelligence Agency to conduct clandestine signals intelligence operations and to prescribe "unique communications security methods and procedures...in support of clandestine activities." Subsection (a) of this section provides that "the Director [of the National Security Agency] shall make special provision for the delegation of limited control of specified signal intelligence facilities and resources required to provide signals intelligence close support to military commanders or the heads of other departments and agencies of the Government."

It is relevant for purposes of discussing section 662, to note that the Central Intelligence Agency: (1) is authorized to collect foreign intelligence by clandestine means abroad (section 413(b)(2)); (2) is responsible for coordinating all clandestine collection of foreign intelligence conducted outside the United States by any other entity of the Intelligence Community (section 413(f)); and (3) is authorized to "establish, maintain and operate secure communications systems in support of Agency operations and, as a service of common concern, establish, maintain and operate such secure communications systems as may be required for the use of other departments and agencies" (section 421(a)(7)).

The language of subsection 662(d) would have the effect of giving the Director of the National Security Agency the authority to review, in the first instance, close support provided by the Central Intelligence Agency via signals intelligence to CIA clandestine operations; and, in the second instance, the Director of the National Security Agency is granted the authority to review, prior to implementation, communications security methods and procedures in support of CIA clandestine activities. It is submitted that such a situation is inconsistent with both the authorities granted the Central Intelligence Agency in Title IV, noted supra, and with the realities of conducting clandestine signals intelligence operations in support of clandestine activities abroad. It would seem not inappropriate to provide that the authorities of the Central Intelligence Agency recognized (not established) in subsection 662(d), be conducted "in consultation with the Director of the National Security Agency." It is therefore recommended that the phrase ", in consultation with the Director [of the National Security Agency]" be inserted in subsection 662(d) in lieu of the following phrases which appear in that subsection: "after review by the Director," and ", in coordination with the Director," and ", after review by the Director,".

The language of subsection 662(a) cited supra recognizes that "close support" is subject to delegation. Such a provision, however, should be clarified so as not to be construed as requiring that whenever such delegation is made, the Director of the National Security Agency would review the activity for which such support was or is to be provided. In the first place, this is not and would not be an appropriate authority charged to the Director of the National Security Agency (note citations to the authorities of the Central Intelligence Agency cited supra). The close support provided by signals intelligence is so integrally connected with the clandestine activities for which the Central Intelligence Agency is granted the authority to conduct, that the close support activities are themselves part of these operations, which, according to the authorities in Title IV cited supra, are strictly within the purview of the Central Intelligence Agency. It is recommended that subsection 662(a) be deleted, or, at a minimum that the authority granted thereunder to the Director of the National Security Agency be made explicitly "subject to the provisions of this Act."

6. Section 662(a)--It is recommended, for purposes of clarification, that this subsection be amended to include specific reference to 50 U.S.C. 833g which authorizes the delegation to the Director of NSA of the authority vested in the Secretary of Defense to terminate employees.

7. Section 662(f)--Also, for clarification purposes, it is recommended that this subsection incorporate all the provisions in 50 U.S.C. 402 note, relating to administrative authorities granted NSA.

Title I and II

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OS:



no OS inquiries involved

he makes an observation.

See 62(a)

- He feels it is inappropriate to comment on another agency's investigative procedure
- CIA's only concern is that the recipient of classified material has appropriate clearances.